IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TA'BOUN, INC. d/b/a TABOUN GRILL,	]	
	]	
Plaintiffs,	]	Case # 17-cv-3616
	]	
v.	]	
	]	
TABOON RESTAURANT CORP., and	]	
POCKET FOODS CORP.,	]	
	]	
Defendants.	]	

COMPLAINT FOR DECLARATORY JUDGMENT

NOW COMES TA'BOUN INC. D/B/A TABOUN GRILL, by and through CHARLES AARON SILVERMAN, and Complains of TABOON RESTAURANT CORP. and POCKET FOODS CORP., stating:

PARTIES AND JURISDICTION

1. This is a civil action seeking a Declaratory Judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, regarding Plaintiff's intellectual property interest in the name of its business, Taboun Grill, under both the Lanham Act, 15 U.S.C § 1051, *et seq*, and state law, namely 765 ILCS 1036 *et seq*.

2. Ta'Boun Inc. is a corporation based in the Northern District of Illinois. They own and operates the Taboun Grill, a kosher restaurant located in Skokie, Illinois.

3. Taboon Restaurant Corp. and Pocket Foods Corp. are corporations based in New York, New York. On information and belief, Taboon Restaurant Corp. owns the Taboon Restaurant in New York, and Pocket Foods Corp. is a licensee thereof.

4. Taboon and Pocket Foods have recently obtained a registered mark from the PTO for 'Taboon' – apparently without knowing during the application process that Plaintiff was using the mark in interstate commerce well before they were.

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 because the question before the Court arises under federal law. This Court has supplemental jurisdiction over the

supplemental claims arising under state law pursuant to 28 U.S.C. § 1367(a).

6. Venue is proper because the operative facts of the mark's first use occurred in the Northern District Illinois.

FACTS UNDERLYING ALL COUNTS

7. Ta'Boun Inc. was established in 2002, and Taboun Grill was opened in 2003 as a kosher Israeli grill restaurant catering to, among others, Chicagoland's Orthodox Jewish population.

8. Between its opening and the present, it has occupied two different locations: one in the West Rogers Park neighborhood of Chicago, and the other in Skokie. Today, only the Skokie location remains.

9. The Grill has been certified kosher since its inception, and filled out paperwork with the Chicago Rabbinical Council before opening, reflecting its name, Taboun Grill.

10. Since its opening, Ta'Boun has become a very popular, and very well-known restaurant within the Orthodox Jewish community both in Chicago, and in the broader Midwest.

11. One of the ways that Ta'Boun has been able to remain competitive in a very difficult market (the costs of operating a kosher restaurant are very high – even higher than the already high costs of operating a full service restaurant) is by catering, and selling prepared kosher food throughout the Midwest.

12. The term Ta'Boun refers to the Middle Eastern style clay oven that is used to make Middle Eastern dishes like Pita. However, due to Taboun Grill's market presence within the Chicagoland, and greater Midwestern Jewish community, the restaurant name has become secondary meaning within those communities. Specifically, within Chicago's Orthodox Jewish community, which only has a handful of kosher restaurants to choose from, the word Taboun means "the Israeli restaurant in Skokie."

13. Unbeknownst to Taboun Grill in Skokie, another restaurant exists in the universe with a similar name. This is not the largest shock in the world given that Ta'Boun just refers to a type of Middle Eastern oven.

14. There are some differences between the restaurants. The spelling of the transliteration of the word Ta'Boun is different between the restaurants. Plaintiff spells the word Ta'Boun, or Taboun, while the Defendant's restaurant is called Taboon. Defendant's restaurant is not a kosher restaurant, and therefore does not enjoy the same reputation within the religions Jewish community. Taboun Grill was opened a year before Taboon. But the most

pronounced distinction between these two restaurants is the 813 miles between them[1].

15. To date, Taboon has had no known presence in Chicago or the Midwest, and certainly no presence within the Orthodox Jewish community in those locations (or, likely, anywhere).

16. Nonetheless, in January of this year, Taboon contacted the owners of Taboun Grill to demand that they cease and desist using the Taboun mark altogether, despite the fact that Taboun has been doing business in the Midwest for longer than Taboon has existed. The communication threatened legal action if Ta'Boun did not change the name of its restaurant.

17. On information and belief, Defendant Taboon does not currently do business in the Midwest.

18. Taboun Grill's usage of its name does not dilute any trademark rights of Defendant (Plaintiff believes that Defendant's mark as registered is invalid, and means any usage marks Defendant may have).

19. At this point, settlement discussions between the parties have broken down, and it appears likely that these parties will be forced to litigate the matter.

COUNT I – DECLARATORY JUDGMENT

20. Plaintiff repeats and realleges paragraphs 1-19 as if stated herein in full.

21. Based upon the differences between these two restaurants, and the massive amount of space between them, there is no real risk that Taboun Grill's usage of it will cause confusion or mistake, or will deceive as to its affiliation.

22. Defendant's mark is relatively unknown in the areas of the country where Taboun Grill does business. Taboun Grill does no business in New York City, or the greater New York area.

23. Further, Defendants' registered mark is invalid, and obtained in error. Defendants have no right to the mark as Plaintiff was using the mark in interstate commerce before Defendants were, and many years before Defendants obtained their federal registration.

24. Accordingly, Plaintiff is entitled to a declaratory judgment that its usage of the word Taboun, as the title of its restaurant, does not violate any portion of the Lanham Act, or constitute unfair competition or trademark infringement under the common law or statutes of Illinois, or any other state in the United States.

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[1] This number came from the Google Maps directions from Ta'Boun, in Skokie, to Taboon in New York City.

25. Plaintiff is further entitled to a declaratory judgment that its usage of the word Taboun does not cause dilution of Defendant's mark under the Lanham Act, or under the Illinois Trademark Registration and Protection Act, 735 ILCS 1036/65.

26. Plaintiff is further entitled to declaratory relief that Defendants' registered marks are invalid.

WHEREFORE, Plaintiff prays for an Order to be Entered:

(a) Declaring that Plaintiff's use of the word Taboun does not violate the Lanham Act, and specifically Sections 32 and 43(a), and 43(c) thereof, 15 U.S.C. § 1114 and § 1125(a) and (c), or constitute unfair competition or trademark infringement under the common law, or statues of Illinois or any other state in the United States;
(b) Enjoining Defendants, and their agents, including anyone in active concert with any of them, from interfering with or threatening to interfere with Plaintiff's usage of the word "Taboun" or "Ta'Boun," or threatening to bring any action placing at issue the right of Plaintiff to use the words "Taboun" or "Ta'Boun" as a title, or in any marketing;
(c) Award Attorney Fees and Costs to Plaintiff given the exceptional circumstances;
(d) Finding that Defendants' PTO registration is invalid; and
(e) Requiring whatever other relief this Court deems just and equitable.

Respectfully Submitted,

s/Charles Aaron Silverman
Attorney for Plaintiff

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